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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR
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November 20, 2016

The Honorable Walter M. Shaub
Director
U.S. Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005

Dear Director Shaub:

As the Ranking Member of the Senate Committee with jurisdiction over the Office of Government Ethics, I write today to request your assistance with understanding how your office plans to address the potential for conflicts of interest in the upcoming Administration of President-elect Donald Trump.

As you know, President-elect Trump is a businessman with considerable financial interests in the United States and around the world. The full extent of his financial interests remains unclear, in part because he was the first presidential candidate in modern history to decline to release his tax returns to the American public. These unique circumstances raise important questions about how the Administration of President-elect Trump will avoid conflicts of interest and ensure integrity of executive branch programs and operations.

As you know, the Office of Government Ethics oversees the executive branch ethics program and works with ethics practitioners in more than 130 agencies to implement this effort. The Office of Government Ethics also plays a critical role in the 2016 Presidential Transition by making sure that prospective nominees are free of conflicts of interest. This role includes providing guidance regarding the federal laws that prohibit certain officials from participating personally and substantially in an official capacity in any matter that will have a direct and predictable effect on their financial interests. Unless an official receives a waiver or an exemption applies, the official with a conflict of interest must disqualify him or herself from participating in the matter. Criminal penalties may apply to officials who violate this statute.

As the independent ethics watchdog of the federal government, the Office of Government Ethics must provide assurances to the American people that your agency will advance a strong ethics program that holds the Administration of President-elect Trump accountable for any conflicts of interest. To better understand how your office plans to address the potential for conflicts of interest in the upcoming Administration of

President-elect Donald Trump, I ask that you please provide the following information by December 5, 2016:

1. **Handling of Trump Organization** – For constitutional reasons, the President is exempt from certain conflict of interest rules, such as the prohibition on acting in matters affecting his personal financial interest or representing his own claims and business interests to the government. However, the President remains subject to many related statutes, such as prohibitions on bribery and embezzlement. President-elect Trump and the Trump Organization reportedly have business with the federal government, lease federal property, and have regulatory and enforcement matters presently being adjudicated by federal government agencies.
 - a. What guidance has Office of Government Ethics (OGE) provided to agency ethics officials regarding the protocols for handling matters directly affecting President-elect Trump and the Trump Organization?
 - b. Will OGE recommend safeguards to protect federal officials from fear of reprisal in dealings with the Trump Organization?
 - c. Will OGE take steps to ensure Trump Organization employees do not have privileged access to decision-makers or access to nonpublic government information?
 - d. President-elect Trump reportedly intends to transfer control of the Trump Organization to his three oldest children.¹ Does this transfer meet the standards of a qualified blind trust, as defined under the Ethics in Government Act?

2. **President-elect Trump's Financial Conflicts** – President-elect Trump's previous financial disclosure reports reveal potential financial conflicts of interest in several areas of the economy and foreign relations. While Presidents are exempt from conflict of interest rules for constitutional reasons, Presidents of both parties, dating back to Lyndon Johnson, have taken significant steps to avoid the appearance of a conflict.²
 - a. Please identify the information that must be included in the President's annual financial disclosure, when a President must file his first disclosure, and whether the public will receive access to these disclosures.
 - b. What steps does OGE require a President to take if any conflicts of interest are apparent on the face of a financial disclosure?
 - c. What steps will OGE require to *prevent* acquisition of new conflicts by President-elect Trump and his Trump Organization?

3. **Transition Team** – President-elect Trump's three oldest children are members of the Presidential Transition team while continuing to serve as executives and

¹ *Three Trump Children Seen Managing President-Elect's Company*, REUTERS (Nov. 11, 2016).

² CYNTHIA BROWN AND L. PAIGE WHITAKER, CONG. RESEARCH SERV., LEGAL SIDEBAR, CONFLICTS OF INTEREST AND THE PRESIDENCY (2016).

officers in the Trump Organization.³ As leaders on the Transition team, his children will be party to sensitive government information and empowered to discuss matters of government policy and operations with the leadership of several federal agencies.

- a. What guidance has OGE provided to agency ethics officials regarding the handling of non-transition business communications from Mr. Trump's children and the Trump Organization during the transition?

4. President-elect Trump's Oldest Children and Jared Kushner – President-elect Trump has reportedly expressed interest in obtaining security clearances for his three oldest children and his son-in-law, Jared Kushner.⁴

- a. What guidance has OGE provided to President-elect Trump's oldest children and Mr. Kushner concerning the management of their conflicts of interest while participating in executive branch deliberations?
- b. Does President-elect Trump have legal authority to appoint these individuals to government positions?
- c. Are President-elect Trump's children and Mr. Kushner exempt from conflict of interest laws?
- d. Has OGE provided guidance to these individuals to ensure they disqualify themselves from matters in which they have financial interests and to prevent inadvertent disclosure of confidential government information?

5. Ongoing Financial Disclosure Obligations – President-elect Trump has disclosed a large portfolio of financial interests that include securities interests in several investment companies.⁵ President-elect Trump will be under an ongoing obligation to file public reports of any securities transactions so that the public may understand his financial interests.

- a. What guidance has OGE provided to President-elect Trump to ensure he continues to file any required financial disclosures of securities transactions?
- b. How often will President-elect Trump be required to file such disclosures?
- c. Will OGE or the White House Counsel be responsible for assessing fines for any late filings?

³ Brian Naylor & Barbara Sprunt, *From Lobbyists to Loyalists, See Who's on Donald Trump's Transition Team*, NPR (Nov. 16, 2016).

⁴ Jim Acosta et al., *Trump Transition Team Asked about Security Clearance for His Children*, CNN (Nov. 15, 2016).

⁵ Gregor Aisch et al., *What's in Donald Trump's 104-Page Financial Disclosure?*, N.Y. TIMES (May 18, 2016).

6. **Outside Fiduciary Positions** – President-elect Trump has disclosed that he serves as chairman or board member of hundreds of companies.⁶ As a board member or officer, he owes those entities and their investors’ legal fiduciary duties that have the potential to interfere with his duties as president.
 - a. What guidance has OGE provided to President-elect Trump regarding his outside positions and the steps he should take to address potential conflicts of interest?
 - b. What safeguards will OGE establish to prevent conflicts of interest between his legal fiduciary obligations to these companies and his legal obligations and duties as President?

7. **Misuse of Image** – Longstanding White House policy across Administrations prohibits the use of the President’s name or image in advertising or for the endorsement of any commercial product or service.
 - a. What guidance has OGE provided to President-elect Trump regarding the use of his name and image for the endorsement of the Trump Organization or his children’s businesses?

If you or members of your staff have any questions about this request, please feel free to contact Roberto Berrios of my staff at (202) 224-2627. Thank you very much for your attention to this matter.

With best personal regards, I am

Sincerely yours,



Tom Carper
Ranking Member

cc: The Honorable Ron Johnson
Chairman

⁶ David Goldman, *Donald Trump’s 500 Businesses Would Pose ‘Unprecedented Ethical Dilemma’*, CNN (Mar. 17, 2016).

Congress of the United States
House of Representatives

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January 19, 2016

The Honorable Walter M. Shaub, Jr.
Director
U.S. Office of Government Ethics
1201 New York Avenue, N.W., Suite 500
Washington, D.C. 20005

Dear Mr. Shaub:

Thank you for appearing before the Subcommittee on Government Operations hearing on December 16, 2015, titled, "Merit System Protection Board, Office of Government Ethics, and Office of Special Counsel Reauthorization." We appreciate the time and effort you gave as a witness before the Committee.

Pursuant to the direction of the Chairman, the hearing record remains open to permit Members to submit additional questions to the witnesses. In preparing your answers to these questions, please include the text of the Member's question along with your response.

Please provide your response to these questions by February 2, 2016. Your response should be addressed to the Committee office at 2157 Rayburn House Office Building, Washington, DC 20515. Please also send an electronic version of your response by e-mail to Sharon Casey, Deputy Chief Clerk, at Sharon.Casey@mail.house.gov in a single Word-formatted document.

Thank you for your prompt attention to this request. If you have any questions, please contact Janel Fitzhugh of the Committee staff at (202) 225-5074.

Sincerely,



Mark Meadows
Chairman
Subcommittee on Government Operations

cc: The Honorable Gerald E. Connolly, Ranking Member
Subcommittee on Government Operations

Enclosure

Questions for The Honorable Walter M. Shaub, Jr.
Director
U.S. Office of Government Ethics

Questions from Chairman Mark Meadows
Subcommittee on Government Operations

Hearing: “Merit System Protection Board, Office of Government Ethics, and Office of Special Counsel Reauthorization”

1. When it passed the Ethics in Government Act of 1978, Congress gave the Director of the Office of Government Ethics responsibility for “monitoring and investigating compliance with the public financial disclosure requirements of title II of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to such title” (5 U.S.C. app. § 402(b)(3)). The Director is also tasked with “monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch” (5 U.S.C. app. § 402(b)(5)). What does OGE do to investigate such compliance?
2. How does OGE confirm that commitments are made to resolve any potential conflicts of interest?
3. What does OGE do to follow up to ensure that such commitments are timely met and appropriately resolved?
4. What, if any, enforcement authority does OGE have to ensure compliance in this area?
5. If OGE does not have enforcement authority to ensure compliance, who has that responsibility?
6. Congress gave OGE the responsibility for “ordering corrective action of the part of agencies and employees which the Director deems necessary” (5 U.S.C. app. § 402(b)(9)), as well as various authorities to execute that responsibility (5 U.S.C. app. § 402(f)). Please provide a list of all instances since OGE’s creation in which OGE has:
 - a. Ordered corrective active pursuant to 5 U.S.C. app. § 402(b)(9);
 - b. Submitted a notification to the President and the Congress, pursuant to 5 U.S.C. app. § 402(f)(1)(B), of agency noncompliance;
 - c. Recommended an investigation pursuant to 5 U.S.C. app. § 402(f)(2)(A)(i)(I);
 - d. Recommended disciplinary action pursuant to 5 U.S.C. app. § 402(f)(2)(A)(i)(I);
 - e. Submitted a notification to the President pursuant to 5 U.S.C. app. § 402(f)(2)(A)(ii)(II);

- f. Submitted a notification to an agency head pursuant to 5 U.S.C. app. § 402(f)(2)(A)(iii)(II);
 - g. Submitted a notification to the President pursuant to 5 U.S.C. app. § 402(f)(2)(A)(iv)(II); and
 - h. Conducted an investigation pursuant to 5 U.S.C. app. § 402(f)(2)(B)(i).
7. Congress also gave OGE the responsibility for “requiring such reports from executive agencies as the Director deems necessary” (5 U.S.C. app. § 402(b)(10)). Please provide a list of all such reports the Director has required since OGE’s creation.
 8. If OGE does not believe factual assertions made in a Presidential candidate’s financial disclosure paperwork, who in the federal government would have responsibility for making a factual determination?
 9. Who in the federal government has enforcement authority to ensure that Presidential candidates comply with financial disclosure requirements?
 10. What is OGE’s role with developing and monitoring ethics agreements for current and former executive branch leaders who have been appointed by the President and confirmed by the Senate?
 11. How does OGE ensure continued compliance with ethics agreements?
 12. What oversight and enforcement authority does OGE have over ethics agreements?
 13. In the context of honoraria disclosure, you stated in your testimony that the Ethics in Government Act is “not the statute that I would have written, as evidenced by the fact that OGE has a confidential financial disclosure system where Congress left us the ability to write our own rules.” What changes would you recommend to the statute?
 14. What do you do to ensure that each federal agency has a Designated Ethics Official?
 15. What do you do to ensure that such ethics officers dedicate the proper amount of time to ethics work?
 16. What is OGE’s process for conducting plenary reviews and inspections of agency ethics programs?
 17. How often does OGE review an agency’s program, and how are recommendations resolved?
 18. If a deficiency is discovered in an agency’s ethics program, what is the process for correcting?
 19. If an agency refuses to correct, does OGE have enforcement authority to seek correction? If not, who is responsible for enforcing correction?

20. What type of information does OGE collect from the Annual Agency Ethics Program Questionnaire and how does OGE utilize that information?
21. Are the results shared with the ethics community and the public?
22. Based on the data from the questionnaire, has OGE identified any common issue areas? If so, how does OGE plan to address such areas?
23. How will the upcoming Presidential election impact your workload and how does OGE prepare for the transition?
24. Explain how OGE is working with GSA, OPM and NARA to prepare for the upcoming Presidential transition.
25. In working with the Partnership for Public Service, what recommendations were provided to assist with the transition?
26. Please discuss any lessons learned or best practices from the last transition that will be incorporated into this upcoming transition.
27. How does OGE support agencies with succession planning in executive branch ethics programs?
28. Please describe your agency's restructuring involving the Program Counsel and the General Counsel, including all former and current responsibilities for each.
29. Please describe all problematic issues which arose in the course of restructuring.
30. The statute on special government employees specifically states that they are "not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days" (18 U.S.C. § 202(a)). What gives OGE the authority to interpret this provision in a different manner than that indicated by the plain language passed by Congress?
31. What steps does OGE take to ensure that this time limit for special government employees is followed?
32. What are the consequences for failing to follow the law with regard to the length of time an individual may be considered a special government employee?
33. What are some of the trends and emerging issues you have identified through your Agency Information Management System (AIMS)?
34. How have you worked with agencies on understanding and addressing those issues?
35. Please describe your new electronic filing system, *Integrity*. How does the system work, how many agencies are currently using the system, approximately how many filers are registered?
36. In light of the recent data breaches at federal agencies, what has OGE done to ensure the new filing system complies with all government security and privacy requirements?

Questions for The Honorable Walter M. Shaub, Jr.
Director
U.S. Office of Government Ethics

Questions from Ranking Member Gerald E. Connolly
Subcommittee on Government Operations

Hearing: “Merit System Protection Board, Office of Government Ethics, and Office of Special Counsel Reauthorization”

1. As the head of an employing agency, do you believe Office of Government Ethics (OGE) has sufficient tools and authorities to discipline employees for misconduct or performance issues when necessary?
2. Based on your agency's experience, do you think statutory change is needed to streamline the federal employee disciplinary process?